

**SPECIAL WARRANTY DEED**  
**and**  
**TRANSFER OF SPECIAL DECLARANT RIGHTS**  
**LOTS 7B, 7C & 7D**

For good and valuable consideration hereinafter set forth, receipt of which is hereby acknowledged, **HKW CASCADES LLC**, a Massachusetts limited liability company ("Grantor"), does hereby GRANT, CONVEY, BARGAIN, SELL, WARRANT and RELEASE UNTO the **CITY OF WINOOSKI**, a Vermont municipality ("Grantee"), that real property located in the City of Winooski, County of Chittenden and State of Vermont, and described on Exhibit "A" attached hereto, together with interests, privileges, and easements appurtenant thereto and any improvements now or hereafter located thereon, and together with the Special Declarant Rights with respect to the Cascades Condominium described on Exhibit "A" attached hereto (the "Property").

Title to the Property is hereby warranted by Grantor against all persons whomsoever as against its acts and no other, subject to the matters set forth on Exhibit "B". It is further warranted and covenanted by Grantor in executing this Deed, and agreed by Grantee in accepting it, as follows:

1. This Special Warranty Deed and Transfer of Special Declarant Rights (this "Deed") is being executed, delivered and accepted in lieu of foreclosure and pursuant and subject to the terms and conditions of that certain Strict Foreclosure and Deed In Lieu Agreement dated as of September \_\_, 2010 among Grantee and Grantor (as amended from time to time, the "Agreement"). The total consideration for this Deed is greater than the fair value of the Property and includes the fair and reasonable value of Grantor's interest in the Property.
2. This Deed is executed voluntarily by Grantor, and not pursuant to duress, coercion, or threats of any kind. Furthermore, it is executed and delivered in mutual good faith between Grantor and Grantee, and is not given or intended to hinder, delay, or defraud any creditor, or to contravene any of the bankruptcy or insolvency laws of the United States or any state or to contravene or violate any other applicable laws.
3. This Deed is not given as security for the payment of money or indebtedness, or as security of any kind or nature; and there is no agreement or understanding, oral or written, between Grantor and Grantee herein, or any other person, relative to a reconveyance of the Property to Grantor, or to a sale or conveyance to anyone else for the benefit of Grantor, or to any division of any proceeds realized from the Property by sale or otherwise. It is the intention of the parties that there shall not be a merger of any liens encumbering the Property in favor of or for the benefit of Grantee as created by the Loan Documents (as defined in the Agreement), including any liens granted pursuant to that certain Mortgage Deed dated September 28, 2007 and recorded in Volume 185 at Pages 105-125 of the City of Winooski Land Records (the "Mortgage"), with the title of Grantee to the Property acquired by virtue of this conveyance, and such liens, on one hand, and title to the Property, on the other, shall remain separate and distinct.
4. Grantor warrants that actual possession of the Property has been surrendered and delivered to Grantee, and Grantor intends by this Deed to vest the absolute and unconditional possession of the Property in Grantee subject to the matters identified on Exhibit "B" upon execution and delivery of this Deed.

5. Grantor intends by this Deed to vest the absolute and unconditional title to the Property in Grantee subject to the matters identified on Exhibit "B", and forever to estop and bar Grantor, and all of Grantor's successors in interest, from having or claiming any right, title, or interest of any nature whatsoever, either in law or in equity, or in possession or in expectancy, in and to the Property or any part thereof by, through or under Grantor. In this regard, and in reliance upon this Deed and all of Grantor's warranties and representations made herein, Grantee shall be entitled to exercise and enjoy all of the rights, responsibilities, powers, and privileges of fee simple ownership of the Property, including, without limitation, maintaining and improving the Property as Grantee deems appropriate, selling or leasing the Property at such time and on such terms as Grantee deems appropriate, paying taxes and assessments levied against the Property; and otherwise acting with respect to the Property consistent with quiet enjoyment and ownership thereof.
6. This Deed shall be interpreted according to, and governed by, the laws of the State of Vermont.
7. This Deed shall be binding upon and inure to the benefit of the parties hereto or named herein and each of their respective successors, assigns, devisees, personal representatives, agents, employees and servants.
8. Grantor hereby declares that the terms of this Deed have been completely read and understood and are accepted voluntarily, freely and without coercion of any sort, and that Grantor has had the opportunity to consult with legal counsel before entering into this Deed.
9. **GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO INVOKE A JUDICIAL OR NON-JUDICIAL FORECLOSURE OF ITS EQUITY OF REDEMPTION UNDER 12 V.S.A. CHAPTER 163, INCLUDING BUT NOT LIMITED TO ANY JUDICIAL OR NON-JUDICIAL SALE.**
10. This deed is an absolute conveyance, the Grantor having sold said land to the grantee for a fair and adequate consideration, such consideration, in addition to that above-recited, being full satisfaction of all obligations secured by the Mortgage and the note(s) secured thereby.
11. Grantor has been advised by its own counsel and declares that this conveyance is freely and fairly made and that there are no agreements, oral or written, other than contained in this deed between Grantor and Grantee with respect to said land.
12. This Deed constitutes a Transfer Document (as defined in the Agreement).

[Signatures Follow]

**IN WITNESS WHEREOF**, the undersigned has caused the foregoing to be executed under seal this 15<sup>th</sup> day of September, 2010.

IN PRESENCE OF:

**HKW CASCADES LLC**

By:

Andrew P. Burnes  
Andrew P. Burnes, Manager

STATE OF VERMONT  
COUNTY OF CHITTENDEN, ss.

At Winooski, this 15<sup>th</sup> day of September, 2010, Andrew P. Burnes personally appeared, Manager of **HKW CASCADES LLC**, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of **HKW CASCADES LLC**.

Before me

Jamie H. Blouin

Notary Public

My Commission Expires: 2/10/11

**EXHIBIT "A"****LEGAL DESCRIPTION****I. Real Property**

Being three certain parcels of land, with improvements thereon and appurtenances thereto, located in the City of Winooski, County of Chittenden, State of Vermont (the "Property") and more particularly described as follows:

Being Lots **7B, 7C and 7D** as depicted on the plat entitled: "Subdivision Plan, Property of the City of Winooski, Lots 7A, 7B, 7C, & 7D, Winooski Falls Way, Winooski, Vermont," prepared by Krebs & Lansing Consulting Engineers, Inc. dated May 24, 2007, and recorded as Map Slide 65, Page 84 of the City of Winooski Land Records (the "Subdivision Plan"). The Property is all and the same lands identified as "Lot 7, Area = 3.314 acres" on a survey entitled: "Boundary Line Adjustment, Property of City of Winooski, Lots 1, 7 & 11," prepared by Krebs & Lansing Consulting Engineers, Inc., dated May 24, 2007 and recorded as Map Slide 65, Page 83 of the City of Winooski Land Records (the "Boundary Adjustment Plan").

Being a portion of the lands and premises conveyed by Warranty Deed from the City of Winooski to HKW Cascades LLC dated September 28, 2007 and recorded in Volume 185 at Pages 96-104 of the City of Winooski Land Records (the "Lot 7 Deed"), which contains the following additional description of the Property:

"Reference is made to the following: "Lot 7" depicted on the Boundary Adjustment Plan consists of all or a portion of parcels of land previously depicted as "Parcel 13", "Parcel 16", and "Parcel 17" on a two sheet survey entitled: "Boundary Survey, Winooski Community Development Area," prepared by Krebs & Lansing Consulting Engineers, Inc., dated January 21, 2004 and recorded on May 26, 2004 in Map Slide 57, Page 54 and Map Slide 58, Page 55 of the City of Winooski Land Records.

Reference is made to the following which vests title to the Property in the City of Winooski:

- (a) The portion of Parcel 13 that is part of Lot 7 was conveyed to the City of Winooski by Quit Claim Deed of Winooski Community Development Corporation dated May 26, 2004 and recorded on May 26, 2004 in Volume 154 at Page 376 of the City of Winooski Land Records.
- (b) The portion of Parcel 17 that is part of Lot 7 was conveyed to the City of Winooski by Quitclaim Deed of Winooski Community Development Corporation dated May 26, 2004 and recorded on May 26, 2004 in Volume 154 at Page 376 of the City of Winooski Land Records.
- (c) The portion of Parcel 16 that is part of Lot 7 is a portion of the lands and premises acquired by the City of Winooski from Vermont Gas Systems, Inc. pursuant to the Condemnation Orders described below.

- (d) The portion of Parcel 17 that was part of Lot 1 and is now a part of Lot 7 (by virtue of the boundary adjustment depicted on the Boundary Adjustment Plan) was conveyed to the City of Winooski by Quit Claim Deed of Winooski Community Development Corporation dated May 26, 2004 and recorded on May 26, 2004 in Volume 154 at Page 366 of the City of Winooski Land Records.
- (e) The portion of Parcel 17 that was a part of Lot 11 and is now a part of Lot 7 (by virtue of the boundary adjustment depicted on the Boundary Adjustment Plan) was conveyed to the City of Winooski by Quitclaim Deed of Winooski Community Development Corporation dated May 26, 2004 and recorded on May 26, 2004 in Volume 154 at Page 380 of the City of Winooski Land Records and which deed was delivered in connection with the Condemnation Orders described below.

Reference is made to the following orders (the "Condemnation Orders"): (1) Highway Takings Order; (2) Municipal Purposes/Parking Garage Takings Order; (3) Highway Damages Order; and (4) Municipal Purposes/Parking Garage Damages Order, all being dated August 19, 2002 and recorded on August 20, 2002 in Volume 131 at Page 708, Volume 131 at Page 717, Volume 131 at Page 704 and Volume 131 at Page 713, respectively, of the City of Winooski Land Records, which, inter alia, condemn and extinguish all interests in Parcel 13, Parcel 16 and Parcel 17. Reference is further made to the following: (1) Stipulation and Order (Parcel 13) dated March 29, 2004 and recorded in Volume 152 at Page 695 of the City of Winooski Land Records; and (2) Certification of Completion of Condemnation dated May 26, 2004 and recorded May 26, 2004 in Volume 154 at Page 384 of the City of Winooski Land Records.

Together with the benefit of and/or subject to the following covenants, rights and easements, each of which (a) shall run with the title to the property hereby conveyed, (b) shall be binding on Grantor, Grantee, all parties having any right, title, or interest in or to the property hereby conveyed and their respective legal representatives, successors, and assigns, and (c) shall inure to the benefit of Grantor, Grantee and their respective legal representatives, successors, and assigns:

1. **Permit Allocations.** The Property shall have the benefit of the following allocations of Parking Spaces, P.M. Peak Trip Ends, gallons per day of wastewater usage, and gallons per day of water usage from the master allocations set forth in the Permits described on Exhibit B hereto (including, without limitation, from the master allocations set forth in Vermont Land Use Permit (Act 250) 4C1065 dated February 26, 2001 and recorded on February 27, 2001 in Volume 118 at Page 783 of the Winooski Land Records):

**Lot 7B:** Parking Spaces – 137; PM Peak Trip Ends – 117; Water Usage - 16,740 GPD; Sewer Usage – 14,560 GPD.

**Lot 7C:** Parking Spaces – 36; PM Peak Trip Ends – 30; Water Usage - 6,300 GPD; Sewer Usage – 5,400 GPD.

**Lot 7D:** Parking Spaces – 54; PM Peak Trip Ends – 40; Water Usage - 8,100 GPD; Sewer Usage – 6,300 GPD.

2. **Beneficial Easements.** The Property shall have the benefit of, and Grantor hereby grants and conveys to Grantee and its successors and assigns, such easements and rights of connection

in, to and over Lot 7A (as shown on the Subdivision Plan, which is a portion of the lands and premises conveyed by the Lot 7 Deed), which are reasonably required to construct, maintain, repair and replace any improvements to the Property so that such improvements blend seamlessly with improvements that have been or may be constructed on Lot 7A. Such easements and rights shall include, without limitation and by way of illustration, the right to construct a parking garage on the Property so that it connects with a parking garage that has been constructed on Lot 7A, with the entrance to the entire parking garage located on either Lot 7A or on the Property such that drivers may enter the garage on one lot and exit on the other. Such easements and rights shall also include, without limitation, the right to install, maintain, repair, replace and inspect conduits, pipes, wires, cables, lines and appurtenances for public or private utility services and systems, rights of and easements for lateral and subadjacent support, the right to share footings and foundation structures that are designed for shared use of buildings on the Property and on Lot 7A, and the right to use driveways, curb cuts and walkways on adjacent property (including, without limitation, through an underground parking structure) for ingress and egress in connection with the construction, maintenance, repair, replacement, use and operation of improvements on the Property. (All such rights and easements are collectively referred to herein as the "Beneficial Easements").

The foregoing grant of the Beneficial Easements is made by Grantor in its capacity as the "Declarant" under the Declaration of Condominium for The Cascades Condominium dated January 8, 2009 and recorded in Volume 195 at Page 495 of the City of Winooski Land Records, as amended by First Amendment to Declaration dated December 18, 2009 and recorded in Volume 204 at Page 473 of the City of Winooski Land Records, and as further amended from time to time (the "Declaration"), and specifically in accordance with its reserved rights, including its Development Rights, under Article 13 of the Declaration and under Section 5.3 of the Declaration. The foregoing grant of the Beneficial Easements is further made in satisfaction of the Grantor's obligations under Section 14(g) of the Mortgage Deed dated September 28, 2007 and recorded in Volume 185 at Pages 105-125 of the City of Winooski Land Records, and the Grantor's obligation to provide the Grantee with a "Return Deed" containing such grant in accordance with the Fifth Amendment to Amended and Restated Development and Disposition Agreement dated as of September 1, 2006 and recorded in Volume 176 at Page 449 of the City of Winooski Land Records and under the Seventh Amendment to Amended and Restated Development and Disposition Agreement dated as of June 15, 2007 and recorded in Volume 183 at Page 56 of the City of Winooski Land Records.

Grantee covenants and agrees for itself and its successors and assigns that any construction, maintenance, repairs or replacements performed pursuant to the Beneficial Easements granted hereby shall be coordinated with the owner or manager of Lot 7A, shall not unreasonably interfere with the rights and interests of Grantor, and that any portions of Lot 7A disturbed by the exercise of the Beneficial Easements granted hereby shall be promptly restored to their prior condition in a good and workmanlike manner. Grantee further covenants and agrees to indemnify and hold Grantor and its successors and assigns harmless from and against any liability, loss, damage, claim, cost, expense or fee including attorney's fees of any kind or nature resulting from personal injury and/or property damage due to or arising out of the exercise of the Beneficial Easements granted hereunder.

## **II. Special Declarant Rights**

Being certain Development Rights held by Grantor, HKW Cascades LLC, as the "Declarant" under the Declaration, set forth in Article 13 of the Declaration and in Sections 5.3, 15.2 and 15.3 of the Declaration, necessary or desirable for the purpose of effectuating the grant of the Beneficial Easements described above, and being more particularly described as follows (capitalized terms used below shall have the meanings given in the Declaration):

1. **Easement for Completion; Utilities; Public Areas.** The right to grant and reserve easements and rights of way: (i) through, under, over and across the Common Elements and the undeveloped portions of the Property for the installation, maintenance, repair, replacement, and inspection of lines and appurtenances for public or private sewer, water, drainage, gas, electricity, telephone, television, mechanical, electrical, plumbing, and other utility services and systems to "Lot 7B," "Lot 7C," or "Lot 7D" depicted on the Plat and improvements thereon; or (ii) for the purpose of completing the construction of improvements on "Lot 7B," "Lot 7C," or "Lot 7D" depicted on the Plat."
2. **Amendment to Alter Condominium.** The absolute right, which may be exercised at any time or from time to time in the sole discretion of Grantee, its successors and assigns within ten (10) years after the sale of the last Unit located within the Building on the Property (meaning "Lot 7A") to grant such easements, rights of way and licenses to additional property (specifically meaning to include "Lot 7B," "Lot 7C" and "Lot 7D" as depicted on the Plat together with such buildings to be constructed thereon and units to be located therein) to use certain Common Elements of the Condominium, specifically including the driveways, parking garage, and the utility chases, lines, pipes and conduits, foundations and supports, subject to such reasonable rules and regulations established by the Association from time to time, and subject to a requirement that the owners of the additional property pay their pro rata share for the maintenance, repair and replacement of the Common Elements used by such owners.
3. **Easement for Further Development.** Perpetual non-exclusive easements, rights of way, and licenses, and the right to grant easements, rights of way and licenses, over, under, across and through all of the Property (other than Units which have been sold by Declarant to Unit Owners) for the purpose of making future connections, hookups, and tie-ins to utility lines, mechanical, electrical and/or plumbing equipment, and other improvements constructed to serve additional property (including, without limitation, "Lot 7B," "Lot 7C" and "Lot 7D" as depicted on the Plat), and for the future use and connection by additional lands including "Lot 7B," "Lot 7C," and "Lot 7D" depicted on the Plat for ingress and egress and all manner of utilities, including reserved easements over all driveways and roadways. The easements, rights of way and licenses reserved hereunder shall be sufficient in scope to permit development, use and occupancy of as many Buildings and Units as the Grantee, its successor or assigns, in their sole discretion shall determine; provided, however, that there shall be no more than a total of 280 Units built on "Lot 7A," "Lot 7B," "Lot 7C" and "Lot 7D."
4. **Amendments to Declaration.** Any amendment to the Declaration permitted by Article 13 of the Declaration need be signed and acknowledged only by the Declarant or by any party to which its reserved Development Rights have been transferred, including without limitation Grantee, its successors and assigns, and it shall be deemed that the Association, Unit Owners, lienholders or mortgage holders have voted for such amendment or amendments.
5. **Transfer of Development Rights.** The Development Rights transferred hereby to Grantee, its successor and assigns, may be further transferred in accordance with § 3-104 of the Act.

Except as set forth above, Grantor, HKW Cascades LLC, retains the Development Rights reserved and described in the Declaration.



**EXHIBIT "B"****PERMITTED EXCEPTIONS**

The Property is being conveyed hereby together with the benefit of and/or subject to the following existing covenants, rights and easements, each of which (a) shall run with the title to the Property, (b) shall be binding on Grantor, Grantee, all parties having any right, title, or interest in or to the Property and their respective legal representatives, successors, and assigns, and (c) shall inure to the benefit of Grantor, Grantee and their respective legal representatives, successors, and assigns:

1. Declaration of Covenants, Easements, Conditions and Restrictions for the Winooski Downtown Redevelopment Project made by and between the City of Winooski, Winooski Community Development Corporation, Raymond Pecor III and Stacey Pecor, HK Winooski, LLC, and Vermont Student Assistance Corporation, dated May 25, 2004 and recorded in Volume 154 at Page 496 of the Winooski Land Records (the "Declaration").

2. Easements and encumbrances shown on the Boundary Adjustment Plan and on the Subdivision Plan, including without limitation the following: (i) Existing "deadman" anchors for the Riverwalk; (ii) the Green Mountain Power Easement pursuant to deed dated December 20, 2005 and recorded at Volume 169 at Page 615 of the City of Winooski Land Records (encumbers Lot 7A and the Lot 2 Easement Parcel); (iii) right of way on Lot 7D depicted as "60' Wide Right of Way Reserved by the City of Winooski"; and (iv) stormwater detention pond partially located on Lot 7C as more particularly shown on the unrecorded plan entitled: "Proposed Cascades Building, Winooski, Vermont, Overall Site Plan," prepared by Civil Engineering Associates, Inc., dated October, 2006, last revised February 20, 2007.

3. Portions of the Property are subject to the following covenant running with the land contained in the Special Warranty Deed from Winooski Urban Renewal Agency to Joanne Hall and Elizabeth A. Brennen, Trustees of Winooski Real Estate Trust dated November 1, 1977 and recorded in Volume 41 at Pages 102-113 of the Winooski Land Records:

"The Grantee agrees for itself and any successor in interest not to discriminate upon the basis of race, creed, color, or national origin in the sale, lease, or rental or in the use or occupancy of the property hereby conveyed or any part thereof or of any Improvements erected or to be erected thereon or any part thereof."

4. Portions of the Property may be subject to the Utility Relocation Agreement between Verizon New England Inc. and the City of Winooski dated December 30, 2003 and recorded in Volume 151 at Page 494 of the City of Winooski Land Records.

5. Cooperative Agreement between the State of Vermont Agency of Transportation and City of Winooski for Advancement of Municipal Project Winooski TCSE005, TSCE005-300 Contract No. CA0105 dated February 27, 2004 and recorded on April 2, 2004 in Volume 152 at Page 504 of the City of Winooski Land Records, as amended.

6. Cooperative Agreement between the State of Vermont Agency of Transportation and City of Winooski for Advancement of Municipal Project Winooski STP 5100(11) and AC STP 5100(12) Contract No. CA0106 dated February 27, 2004 and recorded on April 2, 2004 in Volume 152 at Page 529 of the City of Winooski Land Records, as amended, without limitation, by Amendment

#2 to the Cooperative Agreement Between State of Vermont Agency of Transportation and City of Winooski for Advancement of Municipal Project Winooski STP 5100(11) and AC STP 5100(12) Contract No. CA0106 dated August 11, 2006 and recorded in Volume 176 at Page 277 of the City of Winooski Land Records.

7. Cooperative Agreement Between State of Vermont Agency of Transportation and City of Winooski for Advancement of Municipal Project Winooski STP 5100(10)S, Contract No. CA0158, as amended, without limitation, by Amendment # 2 to the Cooperative Agreement between State of Vermont Agency of Transportation and City of Winooski for Advancement of Municipal Project Winooski STP5100(10)S, 5100010-100-300, Contract No. CA 0158 dated July 26, 2005 and recorded in Volume 166 at Page 91 of the City of Winooski Land Records and by Amendment #3 to the Cooperative Agreement Between State of Vermont Agency of Transportation and City of Winooski for Advancement of Municipal Project Winooski STP 5100(10)S, Contract No. CA0158 dated April 20, 2006 and recorded in Volume 173 at Page 29 of the City of Winooski Land Records.

8. State of Vermont Department of Housing and Community Affairs Monitoring Visit Response dated October 31, 2005 and recorded in Volume 172 at Page 519 of the City of Winooski Land Records.

9. State of Vermont Department of Housing and Community Affairs Monitoring Visit Response dated November 3, 2005 and recorded in Volume 172 at Page 521 of the City of Winooski Land Records.

10. Memorandum of Municipal Action recorded on September 22, 2005 in Volume 167 at Page 558 of the City of Winooski Land Records for Building Zoning Permit No. 20060103 issued August 24, 2004.

11. Reserved easement for building foundation wall encroachment shown on a Condominium Plan entitled "The Cascades Condominium, Condominium Plan (Lot 7A)" prepared by Krebs & Lansing Consulting Engineers, Inc. dated January 6, 2009 and recorded in Volume 195 at Page 530 of the City of Winooski Land Records (as "Exhibit B" to the Declaration of Condominium for The Cascades Condominium).

12. Notice of Permit Requirements. In order to comply with applicable state rules concerning potable water supplies and wastewater systems, a person shall not construct or erect any structure or building on the lot of land described in this deed if the use or useful occupancy of that structure or building will require the installation of or connection to a potable water supply or wastewater system, without first complying with the applicable rules and obtaining any required permit. Any person who owns this property acknowledges that this lot may not be able to meet state standards for a potable water supply or wastewater system and therefore this lot may not be able to be improved.

13. Development and Disposition Agreement. First Amended and Restated Development and Disposition Agreement between the City of Winooski, Winooski Community Development Corporation, HKW, LLC and Hall Keen LLC dated May 24, 2004 evidenced by the Memorandum of First Amended and Restated Development and Disposition Agreement dated May 24, 2004 and recorded in Volume 154 at Page 628 of the City of Winooski Land Records. Reference is made to a letter dated March 1, 2005 from Gerry Myers, City Manager, to Andy Burnes of HallKeen,

together with the attached First Amendment to Amended and Restated Development and Disposition Agreement dated December 29, 2004 and recorded in Volume 161 at Page 610 of the City of Winooski Land Records, and Second Amendment to Amended and Restated Development and Disposition Agreement between the City of Winooski, Winooski Community Development Corporation, HKW LLC and HallKeen LLC dated July 22, 2005 and recorded in Volume 166 at Pages 360 of the City of Winooski Land Records, and Third Amendment to Amended and Restated Development and Disposition Agreement dated September 15, 2005, and Fourth Amendment to Amended and Restated Development and Disposition Agreement dated December 22, 2005 and recorded on December 30, 2005 in Volume 170 at Page 101 of the City of Winooski Land Records, Fifth Amendment to Amended and Restated Development and Disposition Agreement dated as of September 1, 2006 and recorded in Volume 176 at Page 449 of the City of Winooski Land Records, Sixth Amendment to Amended and Restated Development and Disposition Agreement dated as of April 10, 2007 and recorded in Volume 181 at Page 217 of the City of Winooski Land Records, Seventh Amendment to Amended and Restated Development and Disposition Agreement dated as of June 15, 2007 and recorded in Volume 183 at Page 56 of the City of Winooski Land Records, and by the Eighth Amendment to Amended and Restated Development and Disposition Agreement dated as of June 1, 2008 (as amended, the "DDA").

14. Permits. The following permits (the "Permits"), each of which (a) shall run with the title to the Property, (b) shall be binding on Grantor, Grantee, all parties having any right, title, or interest in or to the Property and their respective legal representatives, successors, and assigns, and (c) shall inure to the benefit of Grantor, Grantee and their respective legal representatives, successors, and assigns:

a. Vermont Land Use Permit (Act 250) 4C1065 dated February 26, 2001 and recorded on February 27, 2001 in Volume 118 at Page 783 of the Winooski Land Records, as amended by Land Use Permit (Act 250) 4C1065 (Revised) dated July 6, 2001 and recorded on July 9, 2001 in Volume 121 at Page 683 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-1 dated September 25, 2002 and recorded on September 27, 2002 in Volume 132 at Page 734 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-1 (Corrected) dated November 1, 2002 and recorded on November 4, 2002 in Volume 134 at Page 250 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-2 dated May 22, 2003 and recorded on May 23, 2003 in Volume 142 at Page 272 of the Winooski Land Records; Land Use Permit (Act 250) 4C1065-3 dated February 27, 2004 (UNRECORDED); Land Use Permit (Act 250) 4C1065-4 dated April 1, 2004 and recorded on April 6, 2004 in Volume 152 at Page 573 of the City of Winooski Land Records; as amended by State of Vermont Land Use Permit Amendment No. 4C1065-6 issued on July 15, 2005 and recorded in Volume 165 at Page 463 and recorded in Volume 165 at Page 565 of the City of Winooski Land Records; as amended by State of Vermont Land Use Permit Amendment No. 4C1065-7 issued on August 2, 2006 and recorded in Volume \_\_\_\_ at Page \_\_\_\_ of the City of Winooski Land Records; as amended by State of Vermont Land Use Permit Amendment No. 4C1065-8 issued on June 20, 2006 and recorded in Volume 174 at Page 371 of the City of Winooski Land Records and re-recorded on June 26, 2006 in Volume 174 at Page 473 of the City of Winooski Land Records; as amended by State of Vermont Land Use Permit Amendment No. 4C1065-9 issued on November 30, 2006 and recorded in Volume 178 at Page 212 of the City of Winooski Land Records; as amended by State of Vermont Land Use Permit Amendment No. 4C1065-10 issued on July 25, 2007 and recorded in Volume 183 at Page 355 of the City of Winooski Land Records, together with the permits and approvals referenced therein.

b. State of Vermont Water Supply and Wastewater Permit No. WW-4-1423 dated February 20, 2001, State of Vermont Water Supply and Wastewater Permit No. WW-4-1423-1 dated April 30, 2004 and recorded on May 27, 2004 in Volume 154 at Page 631 of the Winooski Land Records, as amended by Amendment No. WW-4-1423-4 dated June 13, 2005 and recorded in Volume 164 at Page 672 of the City of Winooski Land Records, by Amendment No. WW-4-1423-5 issued on October 7, 2005 and recorded in Volume 168 at Page 329 of the City of Winooski Land Records, by Amendment No. WW-4-1423-6 dated December 29, 2005 and recorded on January 13, 2006 in Volume 170 at Page 722 of the City of Winooski Land Records, by Amendment No. WW-4-1423-7 dated February 7, 2006 and recorded on February 13, 2006 in Volume 171 at Page 489 of the City of Winooski Land Records, by Amendment No. WW-4-1423-8 dated February 7, 2006 and recorded on February 13, 2006 in Volume 171 at Page 491 of the City of Winooski Land Records, and as amended by Amendment No. WW-4-1423-9 dated May 29, 2007 and recorded in Volume 182 at Page 65 of the City of Winooski Land Records.

c. To the extent not amended or superseded by Land Use Permit (Act 250) 4C1065 dated February 26, 2001, as amended, the terms and conditions of Land Use Permit (Act 250) 4C0251 dated May 20, 1977 and all amendments thereto, including but not limited to the following: i) Land Use Permit (Act 250) 4C0251-1 dated March 24, 1978; ii) Land Use Permit (Act 250) 4C0251-2 dated November 14, 1979; iii) Land Use Permit (Act 250) 4C0251-3 dated November 9, 1979; iv) Land Use Permit (Act 250) 4C0251-3B dated December 17, 1981; v) Land Use Permit (Act 250) 4C0251-5 dated January 22, 1981; vi) Land Use Permit (Act 250) 4C0251-5A dated February 25, 1981; vii) Land Use Permit (Act 250) 4C0251-6 dated May 7, 1981; viii) Land Use Permit (Act 250) 4C0251-11 dated December 28, 1989; ix) Land Use Permit (Act 250) 4C0251-12 dated August 25, 1999; and x) Land Use Permit (Act 250) 4C0251-13 dated February 10, 2000 and recorded in Volume 113 at Page 598 of the Winooski Land Records.

d. To the extent not amended or superseded by State of Vermont Water Supply and Wastewater Disposal Permit No. WW-4-1423 dated February 20, 2001, as amended, the terms and conditions of Certification of Compliance 4C0251-4 dated November 8, 1979, which approved a five lot subdivision consisting of Parcel A (Parcel 11), Parcel B (Parcel 10), Phase I (Parcel 13), Phase II (Parcel 12) and Phase III (Parcel 12A).

e. State of Vermont Authorization to Discharge under General Permit 3-9010 Amended Permit No. 3817-9010 dated July 13, 2006 and recorded in Volume 177 at Page 35 of the City of Winooski Land Records.

f. Air Pollution Control Permit No. AP-00-018 dated December 22, 2000 and re-issued on July 27, 2004.

g. Construction General Permit NOI # 5191-9020 issued on April 16, 2007.

h. Public Water System Permit to Construct No. WSID 5102 dated January 16, 2001 and re-issued on January 30, 2004.

AFFIDAVIT

STATE OF VERMONT  
COUNTY OF CHITTENDEN, ss.

Michael O'Brien, being first duly sworn upon oath deposes and says that he is the Mayor of the City of Winooski, a Vermont municipality, named as Grantee in the foregoing Special Warranty Deed In Lieu of Foreclosure of Mortgage Deed; that, as such officer, is authorized to make this Affidavit for and on behalf of that Grantee; that the Grantee, in executing this Affidavit, conditionally accepts said Deed, which acceptance shall become absolute upon the recordation of said Deed in the office of the City of Winooski Land Records; and that, in such event, the Grantee accepts said Deed, agrees to its terms and covenants, and approves the warranties that are therein contained.

CITY OF WINOOSKI

By:

  
Michael O'Brien, Mayor

STATE OF VERMONT  
COUNTY OF CHITTENDEN, ss.

At Winooski, this 5<sup>th</sup> day of September, 2010, Michael O'Brien personally appeared, Mayor of the **CITY OF WINOOSKI**, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of the **CITY OF WINOOSKI**.

Before me,

  
Notary Public  
My Commission Expires: 2/10/11

ESTOPPEL AFFIDAVIT

STATE OF VERMONT  
COUNTY OF CHITTENDEN, ss.

Andrew P. Burnes, being first duly sworn upon oath being the Manager of HKW CASCADES LLC (the "Grantor") the Massachusetts limited liability company which made, executed and delivered that certain Special Warranty Deed In Lieu of Foreclosure of Mortgage Deed (the "Deed in Lieu") to the City of Winooski (the "Grantee") dated the \_\_\_ day of September, 2010, conveying the following described property (the "Property"):

See Exhibit A attached hereto

hereby, not individually, but solely in the aforementioned capacity, says:

1. That the Deed in Lieu was an absolute conveyance of the title to the Property to the Grantee subject to its terms, and was not and is not now intended as a mortgage, deed of trust, or security of any kind;
2. That possession of the Property has been surrendered to the Grantee subject to the terms of the Deed in Lieu;
3. That the consideration for the Deed in Lieu was payment to the Grantor of the sum of Ten Dollars (\$10.00) by the Grantee, receipt for which is hereby acknowledged, together with the other consideration provided under that certain Strict Foreclosure and Deed In Lieu Agreement dated as of \_\_\_\_\_, 2010 among Grantee, Grantor and certain of Grantor's affiliates (as amended from time to time, the "Agreement");
4. That the Deed in Lieu and conveyance were made by the Grantor as the result of its request that the Grantee accept the Deed in Lieu and was its free and voluntary act for the fair market value of the Property;
5. That the Deed in Lieu was not given as a preference against any other creditors of the Grantor;
6. That in executing the Deed in Lieu, the Grantor acted freely and voluntarily and was not acting under any duress, undue influence, misapprehension or misrepresentation by the Grantee in the Deed in Lieu;
7. That affiant will testify, declare, depose or certify before any competent tribunal, officer, or person, in any case now pending or hereafter instituted to the truth of the facts set forth in this Estoppel Certificate;
8. This affidavit is made for the protection and benefit of the Grantee in the Deed in Lieu, its successors and assigns, and all other parties hereafter dealing with or who may acquire an interest in the Property, and particularly for the benefit of any title company which is to insure the title to the said Property in reliance thereon.

HKW CASCADES LLC

By: Andrew P. Burnes  
Andrew P. Burnes, Manager

STATE OF VERMONT  
COUNTY OF CHITTENDEN, ss.

The foregoing document was acknowledged before me this 15 day of September, 2010, by  
Andrew P. Burnes.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: 2.10.11

Janet H. Leonard  
Notary Public

## EXHIBIT "A"

LEGAL DESCRIPTION**I. Real Property**

Being three certain parcels of land, with improvements thereon and appurtenances thereto, located in the City of Winooski, County of Chittenden, State of Vermont (the "Property") and more particularly described as follows:

Being Lots **7B, 7C and 7D** as depicted on the plat entitled: "Subdivision Plan, Property of the City of Winooski, Lots 7A, 7B, 7C, & 7D, Winooski Falls Way, Winooski, Vermont," prepared by Krebs & Lansing Consulting Engineers, Inc. dated May 24, 2007, and recorded as Map Slide 65, Page 84 of the City of Winooski Land Records (the "Subdivision Plan"). The Property is all and the same lands identified as "Lot 7, Area = 3.314 acres" on a survey entitled: "Boundary Line Adjustment, Property of City of Winooski, Lots 1, 7 & 11," prepared by Krebs & Lansing Consulting Engineers, Inc., dated May 24, 2007 and recorded as Map Slide 65, Page 83 of the City of Winooski Land Records (the "Boundary Adjustment Plan").

Being a portion of the lands and premises conveyed by Warranty Deed from the City of Winooski to HKW Cascades LLC dated September 28, 2007 and recorded in Volume 185 at Pages 96-104 of the City of Winooski Land Records (the "Lot 7 Deed"), which contains the following additional description of the Property:

"Reference is made to the following: "Lot 7" depicted on the Boundary Adjustment Plan consists of all or a portion of parcels of land previously depicted as "Parcel 13", "Parcel 16", and "Parcel 17" on a two sheet survey entitled: "Boundary Survey, Winooski Community Development Area," prepared by Krebs & Lansing Consulting Engineers, Inc., dated January 21, 2004 and recorded on May 26, 2004 in Map Slide 57, Page 54 and Map Slide 58, Page 55 of the City of Winooski Land Records.

Reference is made to the following which vests title to the Property in the City of Winooski:

- (a) The portion of Parcel 13 that is part of Lot 7 was conveyed to the City of Winooski by Quit Claim Deed of Winooski Community Development Corporation dated May 26, 2004 and recorded on May 26, 2004 in Volume 154 at Page 376 of the City of Winooski Land Records.
- (b) The portion of Parcel 17 that is part of Lot 7 was conveyed to the City of Winooski, by Quitclaim Deed of Winooski Community Development Corporation dated May 26, 2004 and recorded on May 26, 2004 in Volume 154 at Page 376 of the City of Winooski Land Records.
- (c) The portion of Parcel 16 that is part of Lot 7 is a portion of the lands and premises acquired by the City of Winooski from Vermont Gas Systems, Inc. pursuant to the Condemnation Orders described below.



- (d) The portion of Parcel 17 that was part of Lot 1 and is now a part of Lot 7 (by virtue of the boundary adjustment depicted on the Boundary Adjustment Plan) was conveyed to the City of Winooski by Quit Claim Deed of Winooski Community Development Corporation dated May 26, 2004 and recorded on May 26, 2004 in Volume 154 at Page 366 of the City of Winooski Land Records.
- (e) The portion of Parcel 17 that was a part of Lot 11 and is now a part of Lot 7 (by virtue of the boundary adjustment depicted on the Boundary Adjustment Plan) was conveyed to the City of Winooski by Quitclaim Deed of Winooski Community Development Corporation dated May 26, 2004 and recorded on May 26, 2004 in Volume 154 at Page 380 of the City of Winooski Land Records and which deed was delivered in connection with the Condemnation Orders described below.

Reference is made to the following orders (the "Condemnation Orders"): (1) Highway Takings Order; (2) Municipal Purposes/Parking Garage Takings Order; (3) Highway Damages Order; and (4) Municipal Purposes/Parking Garage Damages Order, all being dated August 19, 2002 and recorded on August 20, 2002 in Volume 131 at Page 708, Volume 131 at Page 717, Volume 131 at Page 704 and Volume 131 at Page 713, respectively, of the City of Winooski Land Records, which, inter alia, condemn and extinguish all interests in Parcel 13, Parcel 16 and Parcel 17. Reference is further made to the following: (1) Stipulation and Order (Parcel 13) dated March 29, 2004 and recorded in Volume 152 at Page 695 of the City of Winooski Land Records; and (2) Certification of Completion of Condemnation dated May 26, 2004 and recorded May 26, 2004 in Volume 154 at Page 384 of the City of Winooski Land Records.

Together with the benefit of and/or subject to the following covenants, rights and easements, each of which (a) shall run with the title to the property hereby conveyed, (b) shall be binding on Grantor, Grantee, all parties having any right, title, or interest in or to the property hereby conveyed and their respective legal representatives, successors, and assigns, and (c) shall inure to the benefit of Grantor, Grantee and their respective legal representatives, successors, and assigns:

1. Permit Allocations. The Property shall have the benefit of the following allocations of Parking Spaces, P.M. Peak Trip Ends, gallons per day of wastewater usage, and gallons per day of water usage from the master allocations set forth in the Permits described on Exhibit B hereto (including, without limitation, from the master allocations set forth in Vermont Land Use Permit (Act 250) 4C1065 dated February 26, 2001 and recorded on February 27, 2001 in Volume 118 at Page 783 of the Winooski Land Records):

**Lot 7B:** Parking Spaces – 137; PM Peak Trip Ends – 117; Water Usage - 16,740 GPD; Sewer Usage – 14,560 GPD.

**Lot 7C:** Parking Spaces – 36; PM Peak Trip Ends – 30; Water Usage - 6,300 GPD; Sewer Usage – 5,400 GPD.

**Lot 7D:** Parking Spaces – 54; PM Peak Trip Ends – 40; Water Usage - 8,100 GPD; Sewer Usage – 6,300 GPD.

2. Beneficial Easements. The Property shall have the benefit of, and Grantor hereby grants and conveys to Grantee and its successors and assigns, such easements and rights of connection

in, to and over Lot 7A (as shown on the Subdivision Plan, which is a portion of the lands and premises conveyed by the Lot 7 Deed), which are reasonably required to construct, maintain, repair and replace any improvements to the Property so that such improvements blend seamlessly with improvements that have been or may be constructed on Lot 7A. Such easements and rights shall include, without limitation and by way of illustration, the right to construct a parking garage on the Property so that it connects with a parking garage that has been constructed on Lot 7A, with the entrance to the entire parking garage located on either Lot 7A or on the Property such that drivers may enter the garage on one lot and exit on the other. Such easements and rights shall also include, without limitation, the right to install, maintain, repair, replace and inspect conduits, pipes, wires, cables, lines and appurtenances for public or private utility services and systems, rights of and easements for lateral and subadjacent support, the right to share footings and foundation structures that are designed for shared use of buildings on the Property and on Lot 7A, and the right to use driveways, curb cuts and walkways on adjacent property (including, without limitation, through an underground parking structure) for ingress and egress in connection with the construction, maintenance, repair, replacement, use and operation of improvements on the Property. (All such rights and easements are collectively referred to herein as the "Beneficial Easements").

The foregoing grant of the Beneficial Easements is made by Grantor in its capacity as the "Declarant" under the Declaration of Condominium for The Cascades Condominium dated January 8, 2009 and recorded in Volume 195 at Page 495 of the City of Winooski Land Records, as amended by First Amendment to Declaration dated December 18, 2009 and recorded in Volume 204 at Page 473 of the City of Winooski Land Records, and as further amended from time to time (the "Declaration"), and specifically in accordance with its reserved rights, including its Development Rights, under Article 13 of the Declaration and under Section 5.3 of the Declaration. The foregoing grant of the Beneficial Easements is further made in satisfaction of the Grantor's obligations under Section 14(g) of the Mortgage Deed dated September 28, 2007 and recorded in Volume 185 at Pages 105-125 of the City of Winooski Land Records, and the Grantor's obligation to provide the Grantee with a "Return Deed" containing such grant in accordance with the Fifth Amendment to Amended and Restated Development and Disposition Agreement dated as of September 1, 2006 and recorded in Volume 176 at Page 449 of the City of Winooski Land Records and under the Seventh Amendment to Amended and Restated Development and Disposition Agreement dated as of June 15, 2007 and recorded in Volume 183 at Page 56 of the City of Winooski Land Records.

Grantee covenants and agrees for itself and its successors and assigns that any construction, maintenance, repairs or replacements performed pursuant to the Beneficial Easements granted hereby shall be coordinated with the owner or manager of Lot 7A, shall not unreasonably interfere with the rights and interests of Grantor, and that any portions of Lot 7A disturbed by the exercise of the Beneficial Easements granted hereby shall be promptly restored to their prior condition in a good and workmanlike manner. Grantee further covenants and agrees to indemnify and hold Grantor and its successors and assigns harmless from and against any liability, loss, damage, claim, cost, expense or fee including attorney's fees of any kind or nature resulting from personal injury and/or property damage due to or arising out of the exercise of the Beneficial Easements granted hereunder.

## **II. Special Declarant Rights**

Being certain Development Rights held by Grantor, HKW Cascades LLC, as the "Declarant" under the Declaration, set forth in Article 13 of the Declaration and in Sections 5.3, 15.2 and 15.3 of the Declaration, necessary or desirable for the purpose of effectuating the grant of the Beneficial Easements described above, and being more particularly described as follows (capitalized terms used below shall have the meanings given in the Declaration):

1. **Easement for Completion; Utilities; Public Areas.** The right to grant and reserve easements and rights of way: (i) through, under, over and across the Common Elements and the undeveloped portions of the Property for the installation, maintenance, repair, replacement, and inspection of lines and appurtenances for public or private sewer, water, drainage, gas, electricity, telephone, television, mechanical, electrical, plumbing, and other utility services and systems to "Lot 7B," "Lot 7C," or "Lot 7D" depicted on the Plat and improvements thereon; or (ii) for the purpose of completing the construction of improvements on "Lot 7B," "Lot 7C," or "Lot 7D" depicted on the Plat."
2. **Amendment to Alter Condominium.** The absolute right, which may be exercised at any time or from time to time in the sole discretion of Grantee, its successors and assigns within ten (10) years after the sale of the last Unit located within the Building on the Property (meaning "Lot 7A") to grant such easements, rights of way and licenses to additional property (specifically meaning to include "Lot 7B," "Lot 7C" and "Lot 7D" as depicted on the Plat together with such buildings to be constructed thereon and units to be located therein) to use certain Common Elements of the Condominium, specifically including the driveways, parking garage, and the utility chases, lines, pipes and conduits, foundations and supports, subject to such reasonable rules and regulations established by the Association from time to time, and subject to a requirement that the owners of the additional property pay their pro rata share for the maintenance, repair and replacement of the Common Elements used by such owners.
3. **Easement for Further Development.** Perpetual non-exclusive easements, rights of way, and licenses, and the right to grant easements, rights of way and licenses, over, under, across and through all of the Property (other than Units which have been sold by Declarant to Unit Owners) for the purpose of making future connections, hookups, and tie-ins to utility lines, mechanical, electrical and/or plumbing equipment, and other improvements constructed to serve additional property (including, without limitation, "Lot 7B," "Lot 7C" and "Lot 7D" as depicted on the Plat), and for the future use and connection by additional lands including "Lot 7B," "Lot 7C," and "Lot 7D" depicted on the Plat for ingress and egress and all manner of utilities, including reserved easements over all driveways and roadways. The easements, rights of way and licenses reserved hereunder shall be sufficient in scope to permit development, use and occupancy of as many Buildings and Units as the Grantee, its successor or assigns, in their sole discretion shall determine; provided, however, that there shall be no more than a total of 280 Units built on "Lot 7A," "Lot 7B," "Lot 7C" and "Lot 7D."
4. **Amendments to Declaration.** Any amendment to the Declaration permitted by Article 13 of the Declaration need be signed and acknowledged only by the Declarant or by any party to which its reserved Development Rights have been transferred, including without limitation Grantee, its successors and assigns, and it shall be deemed that the Association, Unit Owners, lienholders or mortgage holders have voted for such amendment or amendments.
5. **Transfer of Development Rights.** The Development Rights transferred hereby to Grantee, its successor and assigns, may be further transferred in accordance with § 3-104 of the Act.

Except as set forth above, Grantor, HKW Cascades LLC, retains the Development Rights reserved and described in the Declaration.

Vermont Property Transfer Tax  
32 V.S.A. Chap. 231  
-ACKNOWLEDGEMENT-  
Returned Received  
(including certificates and, if required, Act 250  
Disclosure Statement) and tax paid.  
Attest Carnegie Barnett Clerk  
Date 09-15-10 10-88

CITY OF WINOOSKI, VT  
Received for Record September 15 20 10  
at 3:50 o'clock P. M and recorded  
in Winooski Land Records.  
Book 009 Page 433-452  
Attest: Carnegie Barnett  
CITY CLERK